

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. EDCV 19-162-MWF (AFMx)

Date: June 4, 2019

Title: James Rutherford v. La Placita Party Time, et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:
Rita Sanchez

Court Reporter:
Not Reported

Attorneys Present for Plaintiff:
None Present

Attorneys Present for Defendant:
None Present

Proceedings (In Chambers): ORDER DISMISSING DEFENDANT ABESUD HALUM; ORDER TO SHOW CAUSE

On January 28, 2019, Plaintiff James Rutherford commenced this action against Defendants La Placita Party Time (“La Placita”) and Abesud Halum. (Complaint (Docket No. 1)). On March 20, 2019, Plaintiff filed a First Amended Complaint (“FAC”) as of right, replacing La Placita with Qaqi Brothers, Inc. (“Qaqi”). (Docket No. 14).

On March 25, 2019, the Court issued an Order to Show Cause (the “OSC”), directing Plaintiff to explain why “this action should not be dismissed for lack of prosecution” as to Defendant Halum. (Docket No. 19). The Court indicated that it would accept a Proof of Service of the Summons and Complaint on all Defendants. (*Id.*). The Court further indicated that if “the Proof of Service requires Defendant’s future Response, and if Defendant does not timely file such a Response, Plaintiff must file an Application to Clerk to Enter Default (‘Default Application’) within five days after that Response due date.” (*Id.* at 2). The Court noted that “[f]ailure to do so will be deemed abandonment of this action and the Court will immediately dismiss it for lack of prosecution.” (*Id.*).

On March 26, 2019, Plaintiff filed a Proof of Service indicating that Defendant Halum was served on the same day, with a response due April 20, 2019. (Docket No. 15). No response has been filed, so Plaintiff was required to file a Default Application by no later than April 25, 2019. As of June 4, 2019, Plaintiff has failed to do so.

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It is well-established that a district court has authority to dismiss a plaintiff's action due to her failure to prosecute and/or to comply with court orders. *See* Fed. R. Civ. P. 41(b); *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-30 (1962) (noting that district court's authority to dismiss for lack of prosecution is necessary to prevent undue delays in the disposition of pending cases and avoid congestion in district court calendars); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (stating that district court may dismiss action for failure to comply with any order of the court).

Before ordering dismissal, the Court must consider five factors: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to Defendant; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions. *See In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to prosecute); *Ferdik*, 963 F.2d at 1260-61 (failure to comply with court orders).

Taking all of these factors into account, dismissal of Defendant Halum for lack of prosecution and failure to comply with the OSC is warranted. Accordingly, Defendant Halum is **DISMISSED *without prejudice***.

On April 3, 2019, Plaintiff also filed a Proof of Service indicating that Defendant Qaqi was served on March 30, 2019, with a response due April 20, 2019. (Docket No. 15). As of June 4, 2019, no response has been filed and Plaintiff has not filed a Default Application.

Accordingly, Plaintiff is **ORDERED TO SHOW CAUSE**, within **five days** of the entry of this Order, why Defendant Qaqi should not be dismissed for lack of prosecution. The Court will accept one of the following:

1. BY DEFENDANT: Response to the FAC or Application for Stay and Early Mediation by Defendant Qaqi;
2. BY PLAINTIFF: Default Application as to Defendant Qaqi.

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Plaintiff's failure to respond will be deemed abandonment of this action and the Court will immediately dismiss it for lack of prosecution.

IT IS SO ORDERED.